S T A T E O F N E W Y O R K

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S E N A T E - A S S E M B L Y

March 27, 2013

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Local Governments

AN ACT establishing the town of Southampton old filed map substandard road zone

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Establishment of the town of Southampton old filed map substandard road zone. 1. Upon petitions as hereinafter provided, the town board of Southampton may establish an old filed map substandard road zone located within (a) an old filed map overlay district or (b) special old filed map overlay district designated by the town board of the town of Southampton pursuant to article 16 of the town law prior to January 1, 2005, where such establishment is necessary to address public health and safety concerns.

2. Whenever petitions are presented to the town board pursuant to this act, for the establishment of an old filed map substandard road zone the board shall adopt an order and enter the same in the minutes of its proceedings, reciting in general terms the filing of such petitions, the boundaries of the proposed zone, the improvements proposed, the maximum amount proposed to be expended for the improvement as stated in the petitions and the cost of the zone to the typical property and, if different, the typical one or two family home and specifying the time when and place where said board will meet to consider the petitions and to hear all persons interested in the subject thereof, concerning the same. The board shall cause a copy of such order, certified by the town clerk, to be published at least once in the official paper, the first publication thereof to be not less than ten nor more than twenty days

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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before the day set therein for the hearing as aforesaid, and shall also cause a copy thereof to be posted on the sign-board of the town maintained pursuant to subdivision 6 of section 30 of the town law, not less than ten nor more than twenty days before the day designated for the hearing as aforesaid. Prior to the publication of a copy of the order, the board shall cause to be prepared, and file for public inspection with the town clerk, a detailed explanation of how the estimated cost of the zone to the typical property and, if different, the typical one or two family home was computed.

3. The expense of the establishment of the old filed map substandard road zone and providing improvements therefor, shall be assessed, levied and collected from the several lots and parcels of land within the town of Southampton for each purpose in the same manner and at the same time as other town charges, except as otherwise provided by law.

(a) Any costs associated with the establishment of the zone, including the cost of any services or improvements thereon, incurred within the first two years of the existence of the zone shall be paid for by the owners of taxable real property that is located within the zone. If only a portion of a parcel is situated within the zone, the town board shall determine the proportion of the costs to be borne by the owner of such parcel.

(b) All costs associated with the establishment of the zone, including the cost of any services or improvements thereon, incurred after the first two years of the existence of the zone shall be paid for by all of the owners of taxable real property of the town. If only a portion of a parcel is situated within the town, the town board shall determine the proportion of the costs to be borne by the owner of such parcel.

4. Upon petitions, as hereinafter provided, the town board may dissolve and discontinue the old filed map substandard road zone provided that there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of such zone. Such petition shall be signed by resident owners of taxable real property aggregating at least one-half of all the taxable real property of the town owned by resident owners according to the latest completed assessment roll of the town, and acknowledged or proved in the same manner as a deed to be recorded, or authenticated in the manner provided by the election law for the authentication of nominating petitions. When any such petition containing the required signatures shall have been presented, the town board shall adopt an order and enter the same in the minutes of its proceedings, reciting in general terms the filing of the petition, and specifying the purpose thereof, the name and boundaries of the zone and the time when and place where said board will meet to consider the petition and to hear all persons interested in the subject thereof concerning the same. If the petition shall propose that the area of the zone be diminished, the order shall also describe the portion of the zone to be eliminated. The board shall cause a copy of such order, certified by the town clerk, to be published at least once in the official paper, the first publication thereof to be not less than ten nor more than twenty days before the day set therein for the hearing as aforesaid, and shall cause a copy thereof to be posted on the sign-board of the town maintained pursuant to subdivision 6 of section 30 of the town law not less than ten nor more than twenty days before the day designated for the hearing as aforesaid. If the town board shall determine, after such hearing and upon the evidence given at such hearing, that it is in the public interest to dissolve the zone or to diminish the area thereof, the town board shall adopt an order accordingly dissolving the zone or

diminishing its area. If there are any contracts to accomplish the purpose of such zone in force and effect, the town board shall not dissolve such zone, nor diminish the area thereof, prior to the expiration of such contracts.

5. Two petitions shall be required for the establishment of the old filed map substandard road zone. One petition shall be signed by the owners of taxable real property situate in the town of Southampton, owning in the aggregate at least one-half of the assessed valuation of all the taxable real property of such town, as shown upon the latest completed assessment roll of said town; the second petition shall be signed by the owners of taxable real property situate in the town of Southampton, owning in the aggregate at least one-half of the assessed valuation of all the taxable real property of the proposed zone, as shown upon the latest completed assessment roll of said town; provided, however, that if there be any resident owners, the petition shall include the signatures of resident owners owning taxable real property aggregating at least one-half of the assessed valuation of all the taxable real property of the town owned by resident owners, according to the latest completed assessment roll. If only a portion of a parcel of such real estate appearing upon the assessment roll is situate within the town or zone thereof, then the town board may determine the relative value of the part thereof within the town or zone based upon the valuation of the entire parcel as the same appears upon the assessment roll. Such petitions shall describe the boundaries of the proposed zone in a manner sufficient to identify the lands included therein as in a deed of conveyance, and shall be signed by the petitioners, and acknowledged or proved in the same manner as a deed to be recorded, or authenticated in the manner provided by the election law for the authentication of nominating petitions. If such petitions shall request the construction or acquisition of an improvement, they shall state the maximum amount proposed to be expended therefor. If the petitions shall not request the construction or acquisition of an improvement but shall propose the performance or supplying of certain services, they may state the maximum amount to be expended annually for such services.

S 2. For purposes of this act, the following terms shall have the following meanings:

1. the term "typical property" shall mean a benefited property having an assessed value that approximates the assessed value of the mode of the benefited properties situated in the zone or town of Southampton that will be required to finance the cost of the proposed improvements;

2. the term "typical one or two family home" shall mean a benefited property improved by a one or two family dwelling and having an assessed value that approximates the assessed value of the mode of the benefited properties improved by one or two family dwellings situated in the zone or town of Southampton that will be required to finance the cost of the proposed improvements;

3. the terms "cost of the zone to the typical property" and "cost of the zone to the typical one or two family home" shall mean the amount that it is estimated that the owner of such a typical property or home within the zone or town of Southampton will be required to pay for debt service, operation and maintenance and other charges for at least the first five years of existence of the zone; and

4. the term "mode" shall mean, in connection with assessed value of property, the most frequently occurring assessed value as shown on the latest completed final assessment roll.

S 3. 1. After a hearing held upon notice as hereinbefore provided and upon the evidence given thereat, the town board shall determine by resolution: (a) whether the petitions are signed, and acknowledged or proved, or authenticated, as required by law and are otherwise sufficient; (b) whether all the property and property owners within the proposed zone are benefited thereby;(c) whether all the property and property owners benefited are included within the limits of the proposed zone; and (d) whether it is in the public interest to grant in whole or in part the relief sought.

2. (a) If the town board shall determine that the petitions are not signed, and acknowledged or proved, or authenticated, as required by law or that they are otherwise insufficient, or if it is determined that it is not in the public interest to grant in whole or in part the relief sought, the town board shall deny the petitions.

(b) If the town board shall determine that the petitions are signed, and acknowledged or proved, or authenticated, as required by law and are otherwise sufficient and that it is in the public interest to grant the relief sought, either in whole or in part, but shall find that any part or portion of the property or property owners within the proposed zone are not benefited thereby or that certain property or property owners benefited thereby have not been included therein, the town board shall specify the necessary changes of the boundaries of the proposed zone to be made in order that all of the property and property owners and only such property and property owners as are benefited shall be included within such proposed zone, and the board shall call a further hearing at a definite place and time not less than fifteen nor more than twenty-five days after such determination. Notice of such further hearing shall be posted and published in the manner provided in section 193 of the town law except that such notice shall also specify the manner in which it is proposed to alter the boundaries of the proposed zone. Such further hearing shall be conducted in the same manner as an original hearing upon a petition. If and when the town board shall determine in the affirmative all of the questions set forth in subdivision one of this section, the board may adopt a resolution approving the establishment of the zone as the boundaries shall be finally determined and the construction of the improvement or providing of the service therein, but no such resolution so approving shall be adopted unless the petitions shall comply with the requirements of section 191 of the town law as to sufficiency of signers as the boundaries of the proposed zone shall be finally determined.

3. (a) Within ten days after the adoption of a resolution by a town board approving the establishment of the zone and the construction of an improvement or the providing of a service therein, the town clerk of the town shall file a certified copy of such resolution, in duplicate, in the office of the state department of audit and control at Albany, New York, together with an application, in duplicate, for permission to create such zone. Such application shall be executed and verified by the supervisor, or such other officer of the town as the town board shall determine, and shall include the following:

(1) A certified copy of the petitions (omitting, however, the signatures, and acknowledgments or proofs, or authentications);

(2) An itemized statement of the then outstanding indebtedness of the town for all purposes, as evidenced by bonds, bond anticipation notes, capital notes and budget notes; the amount of joint indebtedness contracted or incurred for a joint service or a joint water, sewage or drainage project and the amount of such indebtedness allocated and

apportioned to the town, as defined in title 1-A of article 2 of the local finance law; the amount of the indebtedness proposed to be contracted for the improvement; the amount of budgetary appropriations for the payment of any such indebtedness, whether or not such appropriations have been realized as cash, and the amounts, purposes and probable dates of issuance of any bonds, bond anticipation notes, capital notes and budget notes which the town has authorized to be issued but which in fact have not been issued on the date of such application;

(3) A statement of the aggregate assessed valuation of the real property situated in the proposed zone thereof, as such assessed valuations are shown on the last completed assessment roll of the town prior to the date of such application;

(4) A statement of the average full valuation of the taxable real property of the town. Such average full valuation shall be determined in accordance with the provisions of the first paragraph of paragraph 7-a of section 2.00 of the local finance law; and

(5) A statement as to the manner in which it is proposed to finance the cost of the improvement.

(b) Whenever such an application shall be filed in the office of the department of audit and control, the state comptroller shall within five days thereafter give notice thereof to the board of supervisors of the county in which such proposed zone is located by filing with the clerk of such board of supervisors one copy of such application. At any time within fifteen days of the filing of the application, the board of supervisors may file an objection, in writing, in the office of the department of audit and control. In addition, the state comptroller shall determine whether the public interest will be served by the creation of the zone and also whether the cost thereof will be an undue burden upon the property of the proposed zone. The state comptroller may make such determinations upon the original or any amended application, or in his or her discretion may require the submission of additional information or data in such form and detail as he or she shall deem sufficient, or may cause an investigation to be made, to aid him or her in making the determinations above mentioned.

4. Upon the expiration of fifteen days from the date of the filing of such application with the clerk of the board of supervisors and upon reaching a determination, the state comptroller shall make an order, in duplicate, granting or denying permission for the creation of the zone and shall file one copy of such order in the office of the state department of audit and control at Albany, New York, and the other in the office of the town clerk of the town in which the proposed zone is located. The town clerk shall present such order to the town board of the town at the next meeting thereof.

5. If the state comptroller shall deny permission for the creation of the zone, the town board shall forthwith adopt an order denying the petitions. If the state comptroller shall grant permission therefor, the town board may adopt an order establishing the zone as the boundaries shall be finally determined.

6. Except as otherwise provided by section 202-b of the town law, the permission of the state comptroller shall not be required for the establishment of a zone and the construction of an improvement or the providing of a service therein, including an increase in the maximum amount proposed to be expended for the improvement in a zone, unless it is proposed or required that the town in which such zone is located shall finance the cost thereof by the issuance of the bonds, notes, certificates or other evidences of indebtedness of the town therefore or it is

proposed that debt service on obligations issued to finance the costs of facilities acquired be assumed, pursuant to section 198 of the town law, and, if the state comptroller shall have computed average estimated costs for similar types of zones, the cost of the zone to the typical property or, if different, the costs of the zone to the typical one or two family home, as stated in the notice of hearing, is above the average estimated cost to typical properties or homes for the establishment of similar types of zones as may be annually computed by the state comptroller. The state comptroller annually shall provide to towns notice of the average cost thresholds as may be computed in accordance with this section.

S 4. Upon the adoption of a resolution, the town board of any town may enter into such contracts, as it may deem necessary, with any person, corporation or association for the purpose of ensuring that the cost of any old filed map substandard road zone will not constitute an undue burden upon the property within such zone and may require the filing of a surety bond or bonds or the deposit of cash or securities with the town board to ensure the performance of such contracts.

S 5. 1. The town clerk shall cause a certified copy of the determination or order of the town board adopted pursuant to the provisions of this act, establishing, extending, dissolving or diminishing any zone, to be duly recorded in the office of the clerk of the county in which the town is located, within ten days after the adoption of such order or determination by the town board, and when so recorded such determination or order shall be presumptive evidence of the regularity of the proceedings for the establishment, extension, dissolution or diminution of such zone. Within ten days after the adoption of a determination or order by the town board establishing, extending, dissolving or diminishing a zone, the town clerk shall cause a certified copy thereof to be filed in the office of the state department of audit and control at Albany, New York.

2. Any interested person aggrieved by any final determination or order made pursuant to the provisions of this act may review the same by certiorari provided that the application for such order of certiorari is made within thirty days from the date of the recording of the certified copy of the order or determination in the office of the clerk of the county. The said determination or order shall be final and conclusive unless application has been made for review by certiorari within thirty days from the time of recording thereof. No review shall be had unless at the time of the application for a certiorari order the interested person seeking the review shall give an undertaking approved by the supreme court, or a justice thereof, as to form, amount and sufficiency sureties, that, in the event of failure to modify said final determination or order he, she or they will pay to the town board, all such costs and expenses as are incurred by it on account of the said certiorari proceedings, as shall be determined by the court. In the event that upon such review there shall be any modification by the court of said final determination or order the court shall direct the modification thereof by order which shall be final and conclusive and such town board shall cause such order to be recorded and filed in the same places and manner as was the determination or order appealed from.

S 6. If the town board shall upon the petitions determine to grant the relief sought by the petitioners and establish a zone either in whole or in part, or if the town board shall determine to establish a zone on its own motion without petitions but after a public hearing and subject to a permissive referendum as provided in article 12-A of the town law, the

town board shall, after such determination becomes effective, require the town engineer, or an engineer employed for that purpose, to prepare definite plans and specifications for the improvement, a careful estimate of the expense, and, with the assistance of the town attorney, or an attorney employed for that purpose, a proposed contract or contracts for the execution of the work, and to file the same with the town clerk within a time to be prescribed by the said town board. Thereupon the said board shall examine such definite plans, specifications, estimates and the proposed contract or contracts, and may make such modifications and changes in the plans, specifications, estimates and contract or contracts as to the board shall seem expedient, and thereupon the board may adopt or reject the same. If the estimated expense of the improvement does not exceed the amount specified for public work in subdivision 1 of section 103 of the general municipal law, the board may adopt such plans and specifications and cause said improvement to be made or may enter into a contract or contracts therefor without giving public notice thereof. If the estimated expense exceeds such amount, upon adopting the plans and specifications, the board shall invite sealed proposals for furnishing the material and labor necessary by the publication of a notice at least once in the official paper and in such other newspaper as to the board may seem expedient, requiring all persons who shall offer to do said work to file a sealed proposal or offer to do the work, and with it a certified check for a sum equal to five per centum of the estimated expense of the improvement, payable to the order of the supervisor, or a bond with sufficient sureties, to be approved by the supervisor, in a penal sum equal to five per centum of the estimated expense of the improvement, conditioned that if his or her proposal is accepted he or she will enter into a contract for the same, and that he or she will execute such further security as may be required for the faithful performance of the contract. If a person or corporation making such proposal shall fail to enter into a contract pursuant to the requirements of the board, or shall fail to give the further security which may be prescribed in said notice, within the time to be limited therein, then the check deposited as aforesaid and the moneys standing to the credit of the same shall be forfeited to the town as liquidated damages and not as a penalty, and the supervisor shall collect the same or enforce the payment of the bond for the benefit of the town. The notices inviting sealed proposals shall specify a time when and place where they will be received and considered and they shall be received and considered publicly at such time and place. There shall be at least ten and not more than thirty days between the first publication of the notice and the time when the proposals will be received, and during that time the plans and specifications for the work shall be exhibited publicly in the office of the town clerk. It shall be the duty of the town clerk to provide that all persons desiring to examine the same shall have reasonable opportunity to do so, and that there shall be no discrimination in favor of any person or persons in the opportunity to make proper examination of said plans and specifications. The town board may award one contract for the entire work or separate contracts for portions thereof. The board shall determine the lowest responsible bidder or bidders whose bid and check or bond shall have been made and filed in conformity with this section and with the notice published by the board as aforesaid, and the contract or contracts shall be awarded to the lowest responsible formal bidder therefor, unless in the judgment of the board it shall be in the interests of the town to reject all bids and to advertise anew. In that event, the board shall proceed accordingly. In no event shall

any contract be awarded if the total expense of the improvement shall exceed the maximum amount stated in the petitions or in the final order, if the town board proceeded under article 12-A of the town law. Nothing in this section shall be construed to prevent the town from performing any such work or part thereof by or through its regular employees and the cost thereof shall be considered as part of the expense of the improvement.

S 7. 1. The expense of any public improvement made under authority of article 12 of the town law shall include the amount of all contracts, the costs of all lands and interests therein necessarily acquired including the total payments of principal remaining on obligations assumed pursuant to paragraph (b) of subdivision 12 of section 198 of the town law, the costs of erection of necessary buildings for operation or administration of the improvement, printing, publishing, interest on loans, legal and engineering services and all other expenses incurred or occasioned by reason of the improvement or project. The town board, upon the submission of a verified statement of the cost of preparation of the map and plan accompanying the petitions for the establishment of a zone, and upon the submission of a verified statement of the cost to petitioners for legal services rendered in a proceeding for establishment of the zone, may refund to the petitioners the reasonable cost thereof and include the amount or amounts refunded as a part of the cost of the improvement. In addition, the town board may apportion against and charge to the cost of making any improvement an allowance for any services rendered by the town attorney, town engineer or any salaried town employee, when such services have been necessary to or occasioned by reason of the making of the particular improvement.

2. Except as provided in section 204 of the town law, in all zones in which assessments have heretofore been levied upon an ad valorem basis, assessments shall hereafter be levied upon the same basis. In all zones in which assessments have heretofore been levied upon a benefit basis, assessments shall hereafter be levied upon the same basis.

S 8. After the zone is constructed and completed, it shall be maintained by the town board and the expense of such maintenance shall be a charge upon the owners of taxable real property in the zone or in the town, as the case may be pursuant to subdivision three of section one of this act.

1. If the expense of such improvement is required by subdivision three of section one of this act to be assessed, levied and collected from the several lots and parcels of land in the same manner and at the same time as other town charges, the expense of maintenance of such zone shall be assessed, levied and collected in like manner.

2. The town board shall annually prepare detailed estimates in writing of the anticipated revenues and expenditures for such zone for the purpose of determining the amount of money required to meet the expense of maintaining the zone for the fiscal year commencing on the first of January next succeeding. Such estimate may contain for contingent purposes, an amount not to exceed ten per centum of the amount estimated as necessary to meet the expense of maintaining the zone exclusive of the amount necessary to pay debt service and judgments.

3. After such annual estimates have been prepared, the town board shall annually assess the amount of the estimate of expenditures, less the estimate of revenues as set forth in the estimate so prepared, on the lots and parcels of land against which the expense of the zone was charged, in proportion as nearly as may be to the benefit which each lot or parcel will derive therefrom and shall prepare an assessment roll

which shall describe each such lot or parcel of land in such manner that the same may be ascertained and identified and shall show the name or names of the reputed owner or owners thereof, and the aggregate amount of the assessment levied upon such lot or parcel of land. The town board shall file such estimates and the assessment roll with the town clerk between the first and the fifteenth days of September in each year.

4. The town board may apportion against and charge to the expense of maintaining any zone an allowance for any services rendered by any town officer or employee when such services have been necessary to and occasioned by reason of the maintenance of the zone, or the town board may separately compensate any town officer or employee for services necessary to or occasioned by reason of the maintenance of the zone and include the amount so paid in the expense of such maintenance.

S 9. This act shall take effect on the sixtieth day after it shall have become a law.